



BILLING CODE: 8025-01

## U.S. SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of rescission of four class waivers of the Nonmanufacturer Rule under North American Industry Classification System (NAICS) code 335999 and granting of three new class waivers under NAICS codes 335122, 335110, and 335311.

SUMMARY: The U.S. Small Business Administration (SBA) is rescinding four class waivers of the Nonmanufacturer Rule which were classified under NAICS code 335999 (All Other Miscellaneous Electrical Equipment and Component Manufacturing) and which were further classified under Product Service Codes (PSCs) 5999, 6210, 6240, and 6250. The class waiver applicable to PSC 5999 (Miscellaneous Electrical and Electronic Components) is being rescinded because it has been determined that several small business manufacturers of miscellaneous electrical equipment are currently available to participate in the Federal marketplace. The class waivers applicable to PSCs 6210, 6240, and 6250 are being rescinded because it has been determined that they were each improperly classified under NAICS code 335999. In order to correct this error, SBA is granting three new class waivers under the correct NAICS codes. Specifically, SBA is granting class waivers for the following: (1) NAICS code 335122 (Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing), PSC 6210 (Indoor and Outdoor Electrical Lighting Fixtures); (2) NAICS code 335110 (Electric Lamp Bulb and Part Manufacturing), PSC 6240 (Electric Lamps); and (3) NAICS Code 335311

(Power, Distribution, and Specialty Transformer Manufacturing), PSC 6250 (Ballasts, Lampholders, and Starters). SBA is taking these actions in response to public comments and SBA's independent analysis. The effect of the rescission of the four class waivers will be to require recipients of Federal supply contracts assigned NAICS code 335999 that are set aside for small businesses, service-disabled veteran-owned small businesses, women-owned small businesses, or Participants in the SBA's 8(a) Business Development (BD) program to provide the products of a domestic small business manufacturer or processor, unless an individual waiver of the Nonmanufacturer Rule is granted by SBA. The effect of the three new class waivers will be to allow otherwise qualified small business regular dealers to supply products of a domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses, women-owned small businesses, or Participants in the SBA's 8(a) BD program, where the class of products being procured is classified under PSC 6210, 6240, or 6250.

DATES: This action is effective the date of publication in the Federal Register.

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SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (Act) and SBA's implementing regulations generally require that recipients of Federal supply contracts that are set aside for small businesses, service-disabled veteran-owned small businesses, women-owned small businesses, or Participants in the SBA's 8(a) BD program provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. 15 U.S.C. 637(a)(17), 657s; 13 CFR 121.406(b). This requirement is commonly referred to as the

Nonmanufacturer Rule. The Act authorizes SBA to waive the Nonmanufacturer Rule for any “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market. SBA defines “class of products” as an individual subdivision within a NAICS code as established by the Office of Management and Budget in the NAICS Manual. 13 CFR 121.1202(d). In addition, SBA uses Product Service Codes (PSCs) to further identify particular products within the NAICS code to which a waiver would apply. SBA may then identify a specific item within a PSC and NAICS code to which a class waiver would apply. “Available to participate” in the context of the Federal market means that contractors exist that have been awarded or have performed a contract to supply a specific class of products to the Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or that have submitted an offer on a solicitation for that class of products within that time frame. 13 CFR 121.1202(c).

On November 2, 2004, SBA granted a class waiver of the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Component Manufacturing, classified under NAICS code 335999 (All Other Miscellaneous Electrical Equipment and Component Manufacturing), PSC 5999 (Miscellaneous Electrical and Electronic Components). 69 FR 61429. On January 28, 2008, SBA granted a class waiver for Fluorescent Lamps, Incandescent Lamps, etc., classified under NAICS code 335999, PSC 6240 (Electric Lamps). 73 FR 4940. The same day, SBA granted a class waiver for Electric Lamp Starters and Lamp Holders, etc., classified under NAICS code 335999, PSC 6250 (Ballasts, Lampholders, and Starters). 73 FR 4941. On March 21, 2008, SBA granted a class waiver for Indoor and Outdoor Electric Lighting Fixtures, classified under NAICS

code 335999, PSC 6210 (Indoor and Outdoor Electrical Lighting Fixtures). 73 FR 15251.

In 2013, SBA received a request from a small business manufacturer to rescind the class waiver of the Nonmanufacturer Rule for Miscellaneous Electrical Equipment and Component Manufacturing (classified under NAICS code 335999, PSC 5999). According to the request, there was at least one small business manufacturer that had conducted business with the Federal Government within the previous 24 months and provided at least one of the various supplies listed under the class waiver applicable to Miscellaneous Electrical Equipment and Component Manufacturing. SBA's independent research resulted in the discovery of other small business manufacturers of various items listed under the descriptors applicable to Miscellaneous Electrical Equipment and Component Manufacturing.

On July 17, 2013, SBA published a notice in the Federal Register stating that SBA intended to rescind the class waiver for NAICS code 335999. 78 FR 42817. The public comment period for this notice closed on August 1, 2013. Soon after it closed, a small business manufacturer requested that the public comment period be reopened to allow submission of additional data. SBA reopened the comment period from August 20, 2013 to September 19, 2013. 78 FR 51263. During the comment periods, five respondents submitted eight comments.

Two commenters strongly supported rescinding the class waiver for NAICS code 335999, PSC 5999. These commenters also stated that the three other previously granted class waivers under NAICS code 335999 were misclassified and recommended that SBA reclassify them under different NAICS codes. Another respondent, a small business

manufacturer of electrical equipment, fully supported the rescission of the class waiver for NAICS code 335999, PSC 5999. A fourth commenter opposed the rescission but insisted that SBA adopt the above revisions and reclassifications of the class waivers under NAICS code 335999. A fifth respondent, a small distributor of lighting, electrical and voice and data products, opposed rescinding the waiver and commented that the rescission of this waiver would negatively impact his business. However, the commenter did not provide an explanation or evidence as to how rescission of this waiver would negatively impact his business. That same commenter also recommended that the class waivers for PSCs 6210, 6240, and 6250 be reclassified under different NAICS codes. A small business distributor of electrical supplies supported the rescission of the class waiver for NAICS code 335999, PSC 5999 on the grounds that contracting officers are justifying their refusal to set aside contracts for the procurement of miscellaneous electrical equipment based on this waiver being in place. Another respondent, a small business lighting products distributor, supported rescission of all of the class waivers classified under NAICS code 335999. This respondent commented that a class waiver should never have been granted for PSC 5999 and that the waivers for PSCs 6210, 6240, and 6250 are misclassified under NAICS code 335999, resulting in contracting officials refusing to set aside these procurements for small business and instead choosing to procure through unrestricted procedures. One commenter's request was not relevant to the purpose of this class waiver and therefore is not addressed here.

Based on the public comments received, SBA's analysis of data submitted, and independent market research performed by SBA, it has been determined that several small business manufacturers of miscellaneous electrical equipment are currently

available to participate in the Federal marketplace. In addition, SBA's research validated the commenters' assertions regarding the improper NAICS code classification of the class waivers for PSCs 6210, 6240, and 6250. Therefore, SBA has decided to take the following actions: (1) Rescind the class waiver for Miscellaneous Electrical Equipment and Component Manufacturing, classified under NAICS code 335999, PSC 5999 (see 69 FR 61429); (2) rescind the class waiver for Indoor and Outdoor Electric Lighting Fixtures, classified under NAICS code 335999, PSC 6210 (see 73 FR 15251), and replace it by granting a class waiver for Indoor and Outdoor Electrical Lighting Fixtures, under NAICS code 335122 (Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing), PSC 6210 (Indoor and Outdoor Electrical Lighting Fixtures); (3) rescind the class waiver for Fluorescent Lamps, Incandescent Lamps, etc., classified under NAICS code 335999, PSC 6240 (see 73 FR 4940) and replace it by granting a class waiver for Electric Lamps, under NAICS code 335110 (Electric Lamp Bulb and Part Manufacturing), PSC 6240 (Electric Lamps); and (4) rescind the class waiver for Electric Lamp Starters and Lamp Holders, etc., classified under NAICS code 335999, PSC 6250 (see 73 FR 4941) and replace it by granting a class waiver for Ballasts, Lampholders, and Starters, under NAICS code 335311 (Power, Distribution, and Specialty Transformer Manufacturing), PSC 6250 (Ballasts, Lampholders, and Starters).

Dated: March 31, 2014.

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